THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 5172 of 1999

DATED:19/08/2005

Between:

P.Palakonda Reddy S/o. P.Konda Reddy,
O/o. Cuddapah Dist. Co-op. Milk Producers Union Limited, Proddatur, R/o. 1002/3, YMR Colony, Proddatur,
Cuddapah District.

..... PETITIONER

AND

1 The Prl.Secretay to Government, Animal Husbandry and Fisheries Department, A.P., Secretariat, Hyderabad.
2 The Milk Commissioner,
A.P.Dairy Development Co-op. Federation Ltd., Hyderabad.
3 The Liquidator,
Cuddapah District Co-op. Milk Producers Union Ltd.,
Proddatur, Cuddapah District.

.....RESPONDENT(S)

THE HONOURABLE SRI JUSTICE C.V.RAMULU

W.P.NO.5172 OF 1999

ORDER:

This writ petition is filed seeking a mandamus directing the respondents to consider the case of the petitioner in accordance with the voluntary retirement scheme and pay all consequential benefits.

It is the case of the petitioner that he is graduated in mechanical engineering from Sri Venkateshwara University and joined as Foreman through a process of selection in the erstwhile Proddatur Milk Factory in February,1980. Subsequently in the year 1986, he was promoted to the post of Manager (M&S) under the same management. The said management was under the direct control of Government of A.P. as an undertaking. However, as per the policy decision taken by the

Government of A.P., the management of the said undertaking was transferred to A.P. Dairy Development Corporation Federation and later on from the said Federation, the management was transferred to the control of Cuddapah District Cooperative Milk Purchasers Union Limited. The petitioner has been serving under the control of all managements till he tendered resignation to the post of Manager (M&S) in January,1996 due to certain personal reasons with a request to relieve him from duties with effect from March,1996 i.e. complying the provisions of giving a notice. When the respondents have not taken any action on the resignation tendered by the petitioner, he continued to be in the same post till 27-10-1997 i.e. the cut off date for considering the voluntary retirement scheme. In other words, voluntary scheme came to an end on 27-10-1997. Thereafter, a liquidator was appointed to the said Union in October,1997 to look after the process of liquidation. The necessary process of implementation of voluntary retirement scheme, worked out and prepared the statement showing the names of the individual employees and the particulars indicating the status of all those employees in the month of November,1997. In the said statement, the name and status of the petitioner was also indicated with a specific mention against remarks column. It was stated as “Resigned - 30-1-1996. No action taken yet”. Though, the resignation was there, it was not accepted and allowed the voluntary retirement scheme to elapse and his resignation finally accepted on 16-9-1996 with retrospective effect i.e. from 31-10-1995, the date from which he absented from duties. According to the petitioner, the said order passed by the respondents is arbitrary and illegal.

A detailed counter affidavit has been filed by the respondent No.3 denying the allegations made by the petitioner and further asserting that the resignation of the petitioner could not be accepted immediately as he failed to repay his heavy amount of departmental advance of Rs.62,807-85ps pending recovery from him from 1993-94 and also not handed over the important records and files in his custody as Manager (M&S). He was repeatedly reminded through the notices dated 5-2-1996, 19-2-1996,22-3-1996, 30-3-1996,12-4-1996 and 10-6-1996 to repay the departmental advance due and to hand over records. The petitioner willfully failed to comply with the direction of the respondent–Union. The resignation of the petitioner was accepted by the General Manager of the Department on 16-9-1996 with retrospective effect from 31-10-1995 itself shows that he abstained from his official duties indicating that his terminal benefits will be settled after recovering the dues payable by him. The statement prepared as to the persons those who are eligible for

voluntary retirement and finding of the name of the petitioner in the said list is only a mistake. Therefore, the contention of the petitioner that he was continued to be on the rolls of defunct union on the cut off date of VRS 20-10-1997 is without any substance. The writ petition is devoid of merit and is liable to be dismissed.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the material made available on record.

At the outset, I am of the opinion that the very impugned orders dated 16-9-1996 does not stand the scrutiny of law for the reason that the resignation was accepted with retrospective effect which is not permissible under the law. The petitioner applied for sick leave from 15-9-1995 to 30-10-1995 and thereafter he absented from duty from 31-10-1995. No disciplinary proceedings were initiated against him and when he tendered resignation and when he wanted that he should be retired voluntarily, the same was not accepted and the resignation was accepted with retrospective effect from 30-10-1995 only to indicate the date from which his resignation was accepted and to say that the VRS scheme was not available as on that date i.e.31-10-1995. In fact, VRS was available and name was included in the eligible candidates list, which according to the respondents, is a mistake, which cannot be accepted. Since the resignation was not immediately accepted, it must be deemed that the petitioner was on the rolls of the Union as on the date when list of eligible candidates was prepared and he is entitled to retire voluntarily. This is not a case where any disciplinary action was initiated and thereafter, the services of the petitioner were terminated. In fact, the petitioner made a representation on 9-2-1999 to extend the facility of VRS as was available before 20-10-1997, instead of acceptance of resignation, the same was rejected by the respondents. I am of the opinion that from the over all circumstances of the present case, the only thing that can be inferred is that the petitioner due to ill-health wanted to get out of employment and tendered the resignation but since it was not accepted and he was continued on rolls and voluntary retirement scheme was introduced, he wanted to retire voluntarily, which he was not allowed to do so.

I am of the opinion that the action of the respondents either in accepting the resignation with retrospective effect or not allowing the petitioner to retire voluntarily is arbitrary and illegal.

In the result, the respondents are directed to treat the petitioner as has been retired voluntarily from the services of the Union and settle all his benefits as per eligibility within three months from the date of receipt a copy of this order.

The writ petition is disposed of. No order as to costs.

C.V.RAMULU,J

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19-08-2005

Stp